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ROYAL MONETARY AUTHORITY OF BHUTAN



**BENEFICIAL OWNERSHIP GUIDELINE  
FOR REPORTING ENTITIES**

**2019**

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## Chapter 1. Introduction

- 1.1 This guideline is issued pursuant to Section 45 of Anti-Money Laundering and Countering of Terrorism Act of Bhutan Act 2018, hereafter referred to as AML/CFT Act 2018. This guideline shall be read in conjunction with the additional requirements stipulated under the AML/CFT Act 2018.
- 1.2 This guideline shall be cited as the “**Beneficial Ownership Guidelines for Reporting Entities 2019**”.
- 1.3 This guideline is to assist reporting entities in meeting the requirements to exercise customer due diligence on the customers and beneficial owners of the customers under Chapter 5 of the Anti-Money Laundering and Combating the Financing of Terrorism Rules and Regulations 2022.
- 1.4 A key task is to identify and verify customers’ beneficial ownership arrangements. It is crucial to know who the beneficial owner(s) are so that you can make appropriate decisions about the level of money laundering and terrorist financing risk associated with customers.
- 1.5 This guideline applies primarily to customers who are legal persons or arrangements. The guideline provides information on how to determine beneficial ownership by identifying the individual(s) that own 25 percent or more of a customer, those with effective control of a customer, and persons on whose behalf a transaction is conducted.
- 1.6 A risk-based approach will allow us some flexibility in the measures we adopt to verify the identity of the customers’ beneficial owners.
- 1.7 Evaluation of the money laundering and terrorist financing risks associated with customers shall be based on risk assessment and complemented by AML/CFT programme.
- 1.8 This guideline is provided for information only and cannot be relied on as evidence of complying with the requirements of the AML/CFT Rules and Regulations 2022 and AML/CFT Act 2018. It does not constitute legal advice from any of the AML/CFT supervisors and cannot be relied on as such.

## **Chapter 2. Identification of Beneficial Owner**

### **2.1 Who is a beneficial owner?**

2.1.1 The AML/CFT Act 2018 defines a beneficial owner as:

- a. A natural person who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or
- b. A person who exercises ultimate effective control over a legal person or a legal arrangement.

2.1.2 As per the AML/CFT Act 2018, a natural person is deemed to ultimately own or control rights to or benefit from property within the meaning of the above definition when that person:

- a. Owns or controls, directly or indirectly, whether through trusts or bearer's shareholdings for any legal entity 25% or more of the shares or voting rights of the entity; or
- b. Otherwise exercise control over the management of an entity.

### **2.2 Why is it important to identify the beneficial owner?**

2.2.1 Corporate entities such as companies, trusts, foundations, partnerships, associations and other types of legal persons and arrangements conduct a wide variety of commercial and entrepreneurial activities. However, despite the essential and legitimate role that corporate entities play in the economy, under certain conditions, they have been misused for illicit purposes. Some corporate entities deliberately try to hide the true owners and controllers of their business and its assets to disguise the ownership and hide the illicit origin to circumvent anti-money laundering and countering the financing of terrorist activities.

2.2.2 Reporting entity's obligation is to determine the individual(s) who are the beneficial owner(s). A beneficial owner is an individual (a natural person). Therefore, the beneficial owner can only be an individual, not a company or organisation. There may be more than one beneficial owner associated with customers. Reporting entity's task is to identify and verify the identity of all the beneficial owners of their customers.

2.2.3 One of the most critical aspects of customer identification is knowing the beneficial owner of an account or of a legal entity that seeks to become a customer of an institution. The AML/CFT Act 2018 requires reporting entities to identify and maintain records of such beneficial owners.

### **2.3 The test to identify beneficial ownership**

2.3.1 Reporting entity may apply the test of beneficial ownership to their customers, taking in to consideration the following three factors:

- a) Who owns a controlling interest of the customer?
- b) Who has the ultimate effective control of the customer?
- c) Who is/are the person(s) on whose behalf a transaction is conducted?

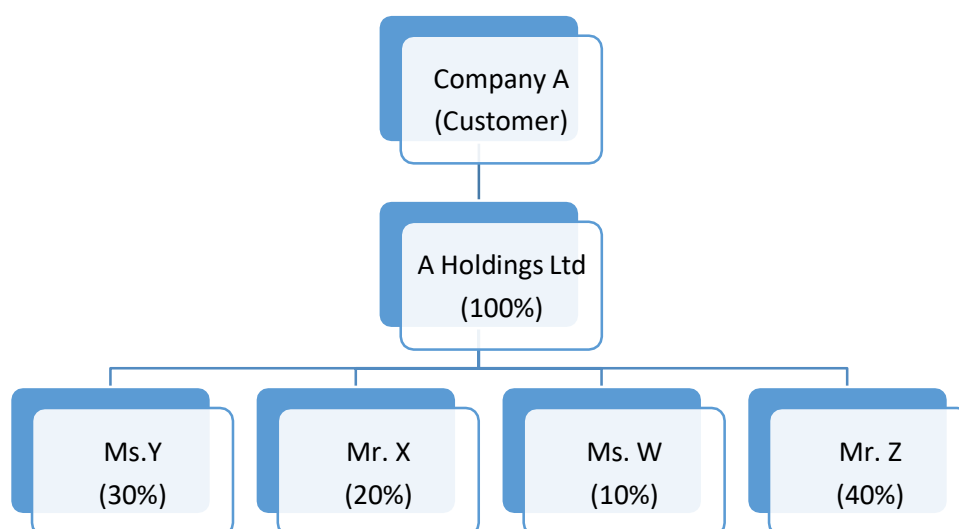
- 2.3.2 Determine who owns 25 percent or more of the customer and who has effective control of the customer, and those persons on whose behalf a transaction is conducted.
- 2.3.3 There may be individuals who have effective control over the customer, but do not have an ownership interest and are not a person on whose behalf a transaction is conducted; they will be beneficial owners.
- 2.3.4 Reporting entity shall establish the customer's ownership structure and understand the ownership at each layer. The beneficial owner is not necessarily one individual, there may be several beneficial owners in a structure. When there are complex ownership layers and no reasonable explanation for them reporting entity should consider the possibility that the structure is being used to hide the beneficial owner(s).
- 2.3.5 In many cases, information will be readily available and quickly provided by the customer. In other cases, reporting entity will need to inquire further into a complex ownership or control structure. Reporting entity will choose to stop at any point in the process, or may find that the information is unobtainable. However, if reporting entity does not identify and verify the identity of the beneficial owner(s), or full identification documents are not produce, reporting entity shall not establish a business relationship or conduct an occasional transaction for the customer.

### Chapter 3. Ownership Control

#### 3.1 Controlling Ownership Interest

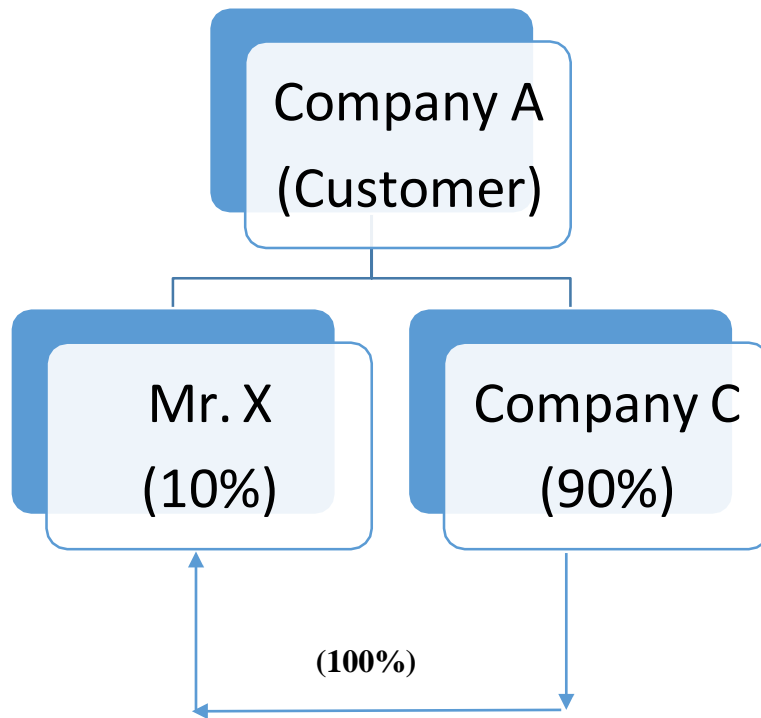
- 3.1.1 Ownership is satisfied either directly or indirectly through multiple corporate structures. Reporting entity will need to understand the ownership structure of their customer. Reporting entity shall consider that it is possible for ownership to be split into parcels of less than 25 percent, but relationships between the parties may give an individual aggregated ownership of the customer that amounts to more than 25 percent.

**Figure 1: Simple Indirect Shareholding**



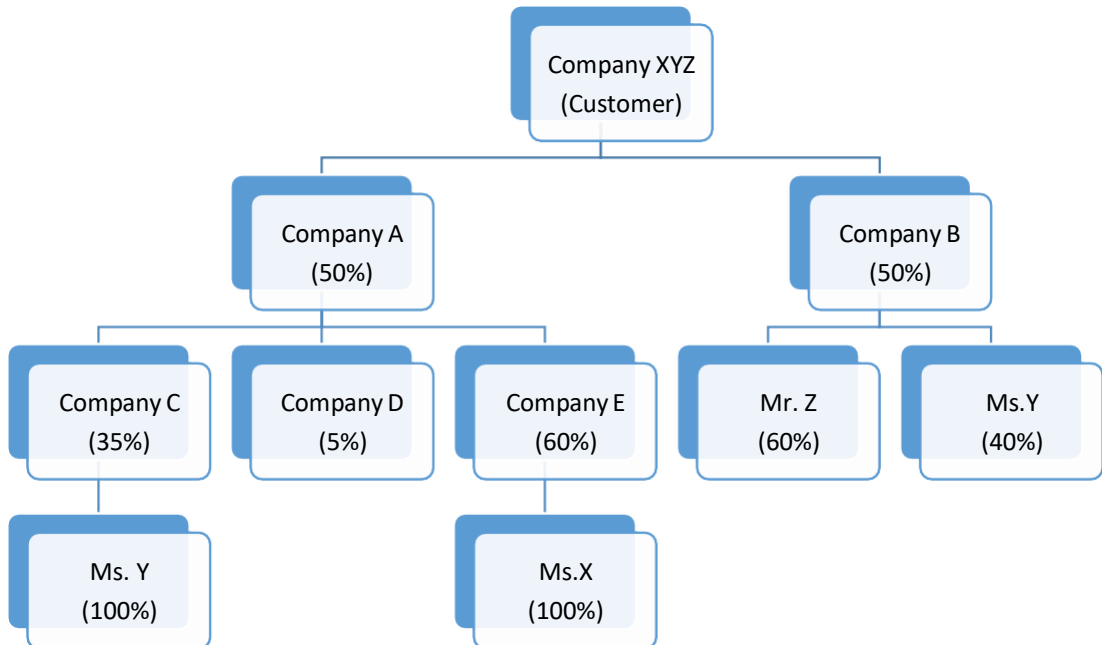
Ms. Y and Mr. Z are beneficial owners of Company. A

**Figure 2: Direct and Indirect Shareholding**



Mr. X is the sole beneficial owner of Company A (Direct 10% and Indirect 90%)

**Figure 3: Multi-level indirect shareholdings**



Ms. Y, Ms. X and Mr. Z are the beneficial owners of Company XYZ through indirect shareholding.

## **3.2 Exercise of Control**

3.2.1 Sometimes ownership is spread over a large number of individuals with no individual owning more than 25 percent. For example, a co-operative with a large number of members is likely to have no individual(s) owning more than 25 percent.

In such cases reporting entity shall still identify a beneficial owner(s). Do not look at formal share ownership, the effective control is the key to determine the beneficial owner(s).

An example: An individual who exercises responsibility for senior management decisions, or similar, of the customer. Understanding the management and governance structure of the customer will assist reporting entity to establish those persons with effective control of the customer. Examples of how natural persons exercise control in relation to a customer who is not an individual, reporting entity shall consider:

- i. Directly or indirectly holds a minimum percentage of ownership interest in the legal person (for example, any persons owning more than a certain percentage of the company, such as 25%).
- ii. Exercise controls as a shareholder or together with other shareholders through execution of contract, reaching understanding, entering into relationship, intermediary or tiered entity like those individuals holding more than 25 percent of the customer's voting rights (e.g. shareholder's agreement, dominant influence to appoint senior management).
- iii. Exerts control of legal person through other means such as personal connections to persons in positions or that possess ownership.
- iv. Exerts control without ownership by participating in the financing of the enterprise, or because of close and intimate family relationships, historical or contractual associations, or if a company defaults on certain payments.
- v. Those individuals with the ability to control the customer and/or dismiss or appoint those in senior management positions.
- vi. Those individuals (for example, the CEO) who hold senior management positions
- vii. Trustees (where applicable).

3.2.2 Some or all of these examples may apply to the customer. Reporting entity shall consider the customer's management and governance structure and decide who has the effective control of the customer.

## **3.3 Person on whose behalf a transaction is conducted**

3.3.1 Another part of the definition of beneficial owner is a person on whose behalf a transaction is conducted. This may be the individual who is an underlying client of the

customer. This concept is important when considering the relationship between managing intermediaries and their underlying clients.

- 3.3.2 An example: If a reporting entity knows that someone (person A) is conducting an occasional transaction on behalf of another person (person B), then person A and person B shall be identified and verified along with any other beneficial owners.
- 3.3.3 Do not confuse persons on whose behalf a transaction is conducted with acting on behalf of a customer.

### **3.4 Acting on behalf of a customer**

- 3.4.1 This is not part of beneficial ownership; it is part of the customer due diligence process. A person might act on behalf of a customer, without being the beneficial owner of that customer. There are instances where persons are acting on behalf of a customer, but are not necessarily beneficial owners of that customer.
- 3.4.2 Acting on behalf of the customer is when a person is authorised to carry out transactions or other activities on behalf of the customer. Reporting entities are required to identify and verify any person who has authority to act on behalf of a customer.
- 3.4.3 In some instances, funds from an unidentified third party entering and then exiting an account may be reasonable grounds to suspect that a customer is acting on behalf of another.
- 3.4.4 Reporting entity will need to ask questions where reporting entity suspect the customer is acting on behalf of another. Suspicion can emerge when reporting entity initially engage with the individual or it can become apparent over time.



## Chapter 4. Risk Based Application

### 3.4 Applying a risk-based approach

- 3.4.1 Identifying beneficial ownership of a customer is an obligation that must be satisfied, regardless of the level of risk associated with that customer. However, when deciding what reasonable steps to take to satisfy yourself that the customer's identity and information is correct, reporting entities may vary your approach depending on the risk assessment of the customer. The process for assessing customer risk and deciding how to identify and verify beneficial ownership shall be set out in reporting entity's AML/CFT programme. This must be based on AML/CFT risk assessment of the reporting entity.
- 3.4.2 Where there are reasonable grounds for suspicion of money laundering or terrorist financing, reporting entity should apply enhanced customer due diligence and make a suspicious transaction report to the Financial Intelligence Department (FID).
- 3.4.3 A risk-based approach allows reporting entity some flexibility in reporting entity's obligation to use data, documents or information obtained from a reliable and independent source to verify the identity of the beneficial owner(s) of the customer. This is applied on a case-by-case basis.
- 3.4.4 It is appropriate for reporting entity's beneficial ownership identification process to include measures to ensure that reporting entity make consistent decisions about customers. This process should be in line with AML/CFT risk assessment. If the customer is associated with higher risk factors, internal controls of AML/CFT programme should set out when to escalate decisions to a higher level.

## **Chapter 5. Record keeping**

5.1 Section 67 of the AML/CFT Act 2018 requires reporting entities to:

- i. Maintain all books and records with respect to its customers and transactions in accordance with Section 68 of this Act; and
- ii. Ensure that such records and the underlying information are available on a timely basis to the Financial Intelligence Department and its Supervisor as and when they are required to be disclosed under this Act.

5.2 Section 68 of the AML/CFT Act 2018 states that the books and records shall include:

- i. Records obtained through customer due diligence measures, including account files, business correspondence, and copies of all documents evidencing the identities of customers and beneficial owners, and records and the results of any analysis undertaken in accordance with this Act, such books and records shall be maintained for not less than ten years after the business relationship has ended;
- ii. Records of transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be maintained for not less than ten years from the date of the transaction;
- iii. The record of any findings resulting from customer risk analysis and related transaction information undertaken in accordance with internal policies, procedures and rules and regulations, and which shall be maintained for at least five years from the date of the transaction;
- iv. Copy of suspicious transaction reports or other reports made to the Financial Intelligence Department including any accompanying documentation, which shall be maintained for at least ten years from the date the report was made; and
- v. Copy of records relating to risk assessments undertaken under this Chapter, which shall be maintained for at least ten years from the date that the assessment was completed.